

App. No. 09/544,399
Amdt. Dated June 16, 2004
Reply to Office Action of December 17, 2003

REMARKS/ARGUMENTS

In the specification, the paragraph beginning on line 15 of page 5 of the specification (second full paragraph of the Detailed Description of the Preferred Embodiment) has been amended to include features described in originally filed claim 2. Since the originally filed claim itself adequately describes the invention, and was not added during amendment, the specification should be amended to include the language of the claim, and thus does not constitute new matter. (*In re Gardner*, 480 F.2d 879, 178 USPQ 149 (C.C.P.A. 1973). Withdrawal of the objections to claims 2 and 13 is therefore respectfully requested.

Claims 1-13 remain in this application and have not been amended herein. The following issues are outstanding in the Office Action dated December 17, 2003:

- *Claim Rejections 35 USC § 102:*

- o Claims 1, 2, and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sinofsky, et al.

Applicant respectfully traverses the rejection under § 102(b), and in light of the following, respectfully requests withdrawal of the rejection.

Contrary to the Examiner's statement that all elements are disclosed in Sinofsky, et al., "a pad for insertion into a wound bed," as recited in claim 1, is not. Therefore, the Applicant respectfully asserts that the rejection to claim 1 is unsupported by the art and should be withdrawn. A § 102(b) reference must sufficiently describe the claimed invention to have the public in possession of it. (*Paperless Accounting, Inc. v. Bay Area Rapid Transit Systems*, 804 F.2d 659, 665, 231 USPQ 649, 653 (Fed. Cir. 1986)). Sinofsky, et al. does not sufficiently

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describe "a pad for insertion into a wound bed." Rather, Sinofsky, et al. describes a stent for insertion into a blood vessel to treat arterial blockage (column 1, lines 20-26).

In regards to the rejection of claim 2, Applicant has amended the specification as mentioned above. Since Sinofsky, et al. does not disclose the element of "electronic radiation in a significant portion between approximately 300nm and approximately 1500nm," withdrawal of the rejection to claim 2 under § 102 is respectfully requested.

In regards to the rejection of claim 5, Applicant respectfully asserts that Sinofsky, et al. does not disclose all the elements of claim 5, since claim 5 is dependent upon claim 1, and therefore incorporates all of the limitations of claim 1. Since Sinofsky, et al. does not disclose all of the elements of claim 1 as mentioned above, withdrawal of the rejection to claim 5 under § 102 is respectfully requested.

- Claim Rejections 35 USC § 103

- Claim 6 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Sinofsky, et al.

Applicant respectfully traverses the § 103(a) rejection, and in light of the foregoing, requests withdrawal of the rejection. Sinofsky, et al. does not expressly teach "a pad for insertion into a wound bed," and therefore cannot be said to teach all of the elements of claim 5 except for a plurality of optical transmitting fibers. Therefore, there cannot be a *prima facie* case of obviousness as required under § 103(a). Furthermore, Sinofsky, et al. is not within the field of current invention, nor is Sinofsky, et al. reasonably pertinent to the particular problem with which the invention is involved. *In re Wood*, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979). Sinofsky is in the field of arterial stents, whereas the current invention is in the field of wound healing. Sinofsky deals with the problem of adhering a stent to an arterial wall (column 3, lines

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1-14), whereas the current invention deals with the problem of healing wounds by applying

negative pressure in combination with phototherapy.

Amendments to the drawings:

The drawings have been objected to by the Draftsperson under 37 C.F.R. 1.84(i).

Applicant will submit new formal drawings to overcome the Draftsperson's objections after the

Examiner has issued a Notice of Allowability.

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SUMMARY

In view of the above, it is submitted that claims 1-13 are in condition for allowance.

Reconsideration and withdrawal of the rejections and objections is hereby respectfully requested.

Allowance of Claims 1-13 at an early date is solicited.

If upon consideration of the above, the Examiner should feel that outstanding issues remain in the present application that could be resolved, the Examiner is invited to contact the undersigned at the telephone number indicated to discuss resolution of such issues.

Applicant respectfully requests favorable consideration.

Respectfully submitted,



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